STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Edina Community Lutheran Church
And Unity Church of St. Paul,

Plaintiffs,

vs.

State of Minnesota,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PERMANENT INJUNCTION

Court File No. 27-CV-05-11659

The above-captioned matter came before the Honorable William R. Howard, Judge of District Court, on June 6, 2006 at 1:00 P.M. on the parties' cross motions—the Defendant's Motion for Summary Judgment, the Plaintiffs' Motion for Permanent Injunction and Unity Church's Motion for Summary Judgment and Permanent Injunction. David Lillehaug, Fredrickson & Byron, appeared on behalf of plaintiff Edina Community Lutheran Church (ECLC); Marshall Tanick, Mansfield, Tanick and Cohen, appeared on behalf of plaintiff Unity Church of St. Paul (Unity); Michael Vanselow, Deputy Attorney General, appeared on behalf of the State. The parties stipulated that the record was complete and the matter was ripe for decision on the merits. On July 21, 2006, the Court requested supplemental submissions from the parties on two issues; those submissions were received by August 17, 2006, and the matter was taken under advisement. Based on the stipulated facts, evidence submitted and the arguments presented, the Court makes the following findings:

PROCEDURAL HISTORY

I. The 2003 Act, "ECLC I" and "Unity I"

In May 2003, the Minnesota Legislature passed the Minnesota Citizens' Personal Protection Act (2003 Minn. Laws Ch. 28). The Act created a uniform system that vested responsibility to issue handgun permits and established specific standards with regard to permits. The Act had the effect of making Minnesota a "shall issue" state with regard to permits to carry and handgun, and was commonly known as the "conceal and carry" law.

The Act also changed Minnesota law with regard to the right to carry and possess a gun on private property within the state. *See* Minn. Stat. §624.714. (2004).

Also in May 2003, ECLC filed a lawsuit in Hennepin County District Court challenging the Act as unconstitutional ("ECLC I"). On June 6, 2003, Judge Marilyn Rosenbaum issued a temporary injunction against the "reasonable request" portions of the Act, which the court found to infringe upon the "freedom of conscience" rights of the plaintiffs under Article 1, §16 of the Minnesota Constitution. Judge Rosenbaum's order denied the motion for injunctive relief with regard to other portions of the Act. The plaintiffs filed an interlocutory appeal and on January 13, 2004, the Court of Appeals reversed, finding that the infringement of plaintiffs' property rights was sufficient controversy to allow standing to further challenge the statute. Upon remand, on March 16, 2004, Judge Rosenbaum expanded the scope of the temporary injunction.

In October 2003, Unity filed a lawsuit in Ramsey County District Court, also a constitutional challenge to the Act ("Unity I"). On July 14, 2004, Judge John Finley issued an order, finding the entire Act unconstitutional; he ruled that the plaintiffs were entitled to summary judgment because the Act was passed in a law that improperly covered more than one subject. The ECLC I lawsuit was subsequently dismissed because the law was no longer in effect. The Court of Appeals affirmed based on the "single subject" rule, but did not decide any issues of religious infringement.

II. The 2005 Act and Current Litigation

In its 2005 session, the Minnesota Legislature enacted Articles 2 and 3 of Chapter 28, and made the law retroactively effective from April 28, 2003, effectively reenacting the 2003 Act, with certain modifications and amendments meant to address the courts' decisions (2005 Act). Pertinent to the current litigation, the 2005 Act amended the provisions of the law governing notice to the public when a private establishment bans guns. The specifics of these changes are discussed in the Findings of Fact in this order.

On July 29, 2005, ECLC and Unity filed the current lawsuit. On September 9, 2005, District Court Judge LaJune Lange granted the plaintiff's motion for temporary injunction. In May 2006, the parties filed their cross-motions for relief.

FINDINGS OF FACT

1. The court incorporates the May 9, 2006 Affidavit of David L. Lillehaug, and documents therein marked as Exhibits A-BB as stipulated by the parties.

2. The legislative title to the 2005 Act states that it is:

> Relating to public safety; reenacting the Minnesota Citizens' Personal Protection Act of 2003; recognizing the inherent right of law abiding citizens to self-protection through the lawful use of self-defense; providing a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol; providing criminal penalties; amending Minnesota Statutes 2004, sections 609.66, subdivision 1d; 624.714, subdivisions 1b, 2, 2a, 3, 8, 12, 17 as reenacted, by adding a subdivision.

S.F. 2259, Second Engrossment (2005).

2. The 2005 Act was passed as a stand-alone bill to address Judge Finley's ruling that the 2003 Act was unconstitutional based on the "single-subject rule." The 2003 Act was re-enacted and was also amended to try and address Judge Rosenbaum's ruling that the challenged provisions violated the plaintiff's "freedom of conscience" by changing the notice requirements of private establishments. The plaintiffs' churches fall under the statutory definition of "private establishment."

3. The 2005 Act did not change the provisions concerning the prohibition on gun bans in parking lots or the prohibition on gun bans with regard to tenants and their guests. An exemption for private residences remains in the law. Firearm prohibitions with regard to State Capitol and courthouse buildings are separately covered under Minn. Stat. 609.66, subd. 1g.

3. Minnesota Statutes Section 624.714 now reads, in pertinent part:

Subd. 17. Posting; trespass. (a) A person carrying a firearm on or about his or her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this subdivision is not subject to forfeiture.

(b) As used in this subdivision, the terms in this paragraph have the meanings given.

(1) "Reasonable request" means a request made under the following circumstances:

(i) the requester has prominently posted a conspicuous sign at every entrance to the

establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES."; or

(ii) the requester or the requester's agent personally informs the person that guns are prohibited in the premises and demands compliance.

(2) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.

(3) "Conspicuous" means lettering in black arial typeface at least 1- 1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(4) "Private establishment" means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

(c) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

(d) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(e) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(f) Notwithstanding any inconsistent provisions in section 609.605 this subdivision sets forth the exclusive criteria to notify a permit holder when otherwise lawful firearm possession is not allowed in a private establishment and sets forth the exclusive penalty for such activity.

(g) This subdivision does not apply to:

(1) an active licensed peace officer; or

(2) a security guard acting in the course and scope of employment.

Subd. 22. Short title; construction; severability. This section may be cited as the Minnesota Citizens' Personal Protection Act of 2003. The legislature of the state of Minnesota recognizes and declares that the second amendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test. The invalidation of any provision of this section shall not invalidate any other provision.

Subd. 23. Exclusivity. This section sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law or governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.

CONCLUSIONS OF LAW

1. Summary Judgment is denied when genuine issues of fact exist to prevent judgment as a matter of law. Here, genuine issues of statutory interpretation are before the court for decision on the merits, precluding summary judgment as a matter of law.

2. A permanent injunction may be issued when the moving party has demonstrated that the legal remedy is inadequate to prevent an irreparable injury. Because a constitutional violation is an irreparable harm for which there is no adequate legal remedy, a permanent injunction may be issued upon the finding of constitutional violation.

3. The 2005 Act is unconstitutional, as it violates the rights of the plaintiffs with respect to their freedom of conscience under Article 1, Section 16 of the Minnesota Constitution.

4. The 2005 Act is unconstitutional, as it violates the rights of the plaintiffs with respect to their right of free association under the First and Fourteenth Amendments to the United States Constitution.

5. The 2005 Act violates the Religious Land Use Act of 2000, as codified under 42 U.S.C. Section 2000cc *et seq*.

ORDER

1. Defendant's motion for Summary Judgment is hereby **Denied;**
2. Plaintiff Unity Church's Motion for Summary Judgment is hereby **Denied;**
2. Plaintiffs' Motion for Permanent Injunction is hereby **Granted**;
3. The following Memorandum is hereby incorporated into the Order.

There being no just reason for delay, LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: 11/14/06

BY THE COURT:

William R. Howard
Judge of District Court

MEMORANDUM

I. Summary Judgment

Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and one party is entitled to judgment as a matter of law. Minn.R.Civ.P 56.03. A material fact is one that will affect the outcome of the case. Spragg v. Shuster, 398 N.W.2d 683, 685 (Minn.App. 1987). The facts shall be viewed in a light most favorable to the non-moving party. Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955). The burden of proof is on the moving party to show an absence of material fact. Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988).

In this case, the parties concurred that that "there are no material facts in dispute and the matter is ripe for resolution on [the parties' respective] dispositive motions."[1] Because the parties have stipulated to the record, the question becomes whether that record sufficiently demonstrates that one party is entitled to judgment, based not on facts in dispute but rather whose proposed application of the law controls to find in their favor regarding the constitutionality of the Act. *See* Mitchell v. Steffen, 487 N.W.2d 896, 901 (Minn.App. 1992).

The record in this case contains five separate affidavits and two sets of interrogatory answers from pastors of the plaintiff churches in this case, testifying to the

[1] *See* Correspondence from State's counsel Michael J. Vanselow, May 5, 2006.

religious mission and activities of the churches.[2] The affidavits were submitted to show that the Act creates an unconstitutional burden on the church. These affidavits and answers are uncontroverted by affidavits from witnesses for the State; instead the State presents arguments that the burden on the plaintiffs is insufficient to render the Act unconstitutional.

Because the record has been stipulated to, the unrebutted testimony of the pastors, along with the legislative history, is sufficient to create a material issue with regard to interpretation of the law. Neither the State nor Unity Church has met their burden of proof, and summary judgment is denied as against the Plaintiffs and as against the State as brought by Unity. However, because the record demonstrates that material issues exist with regard to the Act's application to religious institutions, it does not directly follow that the temporary injunction issued by Judge Lange shall be automatically converted to a permanent injunction enjoining the Act's enforcement.

II. Permanent Injunction Standard

The present case is ripe for a decision on the merits. "Before permanent injunctive relief may be awarded, the merits of the dispute must be determined." Bioline, Inc. v. Burman, 404 N.W.2d 318, 320 (Minn.App. 1987). The decision to grant a permanent injunction is within the sound discretion of the trial court. Cherne Industrial, Inc. v. Grounds Associates, Inc., et al, 27 N.W.2d 81, 91 (Minn. 1979). The party seeking injunction must establish that [the] legal remedy is not adequate and that the injunction is necessary to prevent a great and irreparable injury. Id. Thus, the court now addresses the merits of the plaintiffs' complaint.

III. "Freedom of Conscience" Claim

Article I, Section 16 of the Minnesota Constitution reads as follows:

> FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP. The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights

[2] Unless incorporated within, this number does not include the documentary affidavits of the plaintiffs' counsel.

> of conscience be permitted, or any preference given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

Art. 1, Sec. 16, Minnesota Constitution.

The Plaintiffs allege that the applicable subdivisions in the Act violate their right to religious freedom by imposing an unconstitutional burden on their religious practices. When the constitutionality of a statute is challenged, some general principles apply. First, a statute is presumed constitutional unless absolutely necessary. Willette v. The Mayo Foundation, 458 N.W.2d 120, 122 (Minn.App. 1990). The Plaintiff has the burden of showing that the statute is unconstitutional beyond a reasonable doubt. Id. The court's role is to determine constitutionality, not whether the law is wise. State v. Merrill, 450 N.W.2d 318, 321 (Minn. 1990). Where possible, a court should interpret a statute to preserve its constitutionality. Hutchinson Technology Inc. v. Commissioner of Revenue, 698 N.W.2d 1, 18 (Minn. 2005). But when a court determines that a stature is unconstitutional, it must invalidate as much of the statute as is necessary to eliminate the unconstitutionality. Chapman v. Commissioner of Revenue, 651 N.W. 2d 825, 838 (Minn. 2002).

In order to analyze a claim of a burden on religious practices, the Minnesota courts looks to the "compelling state interest" test used in State v. Hershberger, 462 N.W.2d 393, 398 (Minn. 1992). In Hershberger, the Minnesota Supreme Court held that greater protections of religious freedom are provided under the Minnesota Constitution than those found under the United States Constitution. Id. at 397. Under the "compelling state interest" test, the court looks at four factors: 1) whether the religious belief is sincerely held, 2) whether the state regulation in question burdens the exercise of religious beliefs, 3) whether the state interest in the regulation is overriding or compelling, and 4) whether the regulation uses the least restrictive means. Hill-Murray Federation of Teachers v. Hill-Murray High School, 487 N.W.2d 857, 865 (Minn. 1992).

A. Sincerity of Religious Beliefs. The parties do not contest the first factor: the State concedes that the religious beliefs of the plaintiffs regarding the sanctity of their sanctuary and their religious services are sincerely held. The evidence and arguments

reflect that the law, as re-enacted, does burden religious organizations and their property. However, the parties dispute the level and effect of any burden, whether or not a compelling state interest exists to justify or overcome the burden, and whether or not the Act uses the least restrictive means available to achieve its purposes.

B. Burden on Religious Beliefs. In order for a burden to be unconstitutional, it must be considered substantial; minimal interference will not violate Art. 1, §16. Hill-Murray, 487 N.W.2d at 866. The plaintiffs argue that the burden imposed by the Act significantly affects their right to practice their religion as they see fit. The State argues that the burden is *de minimis* and the Act does not substantially burden their right to practice their religion. Because the statute contains a severability clause, the Court finds it prudent to determine the level of burden presented by each provision.

i. Signage or Personal Notice Requirement

Minn. Stat. §624.714 contains two provisions governing how a private establishment may provide notice to its patrons that guns are banned on the premises. The first is a signage option; an establishment may post signs notifying others of the gun ban. The provision contains very specific requirements regarding location of the signs and size of the signs, as well as font type and size. The statute also clearly delineates the specific language that must be used by the establishment to convey the message of the ban. Alternatively, the statute provides for a personal notice option. Under this provision, the gun ban may be demonstrated when "the requester or the requester's agent personally informs the person that guns are prohibited in the premises and demands compliance." The plaintiffs argue that the language is so specific as to require individual notice to each and every person entering the premises, as they enter the premises. The State argues that the requirement may be satisfied by an announcement or notice in a bulletin or mailing.

The court finds the signage requirement as written is a substantial burden on a religious organization's right to practice its religion as it sees fit. The affidavits of the pastors, admitted as facts in this case, testify to the religious infringement presented by requiring a secular message at the front door of a church. These affidavits are uncontested by the State, and the State has already conceded that the religious beliefs in question are sincerely held. And, as stated in Unity's argument, the specificity of the

language creates a state mandated message that impermissibly interferes with a religious organizations' freedom of conscience and right to practice their religion.

The State argues that the signage requirements are religiously neutral and do nothing more than promote the state interest in uniformity for the public's understanding. However, the State took the position in this proceeding that religious organizations are free to add words to their signs if they so desire, as long as the signage still contains the required language. This defeats the stated purpose of uniformity for public understanding. Moreover, the State simply has no answer for the plaintiffs' contention that a secular sign on their front door infringes on their religious beliefs. Thus, the signage requirement, as written, infringes on the plaintiffs' freedom of conscience.

The alternative to the signage requirement is no less an infringement. As written, communication must be personal, with compliance demanded. As the pastors for the plaintiffs have attested, and Judge Lange found in ordering the temporary injunction, a secular announcement during a religious service impermissibly interferes with the churches' right to practice their religion as they see fit. If no public announcement is made, it appears as though the churches would have to place agents at each entrance to personally inform every entrant of the ban. This is a significant burden to a religious, nonprofit organization, particularly one whose doors are open to the public for sanctuary seven days a week. Even if the court were to find agreement with the state's contention that notice in a mailing or bulletin were to suffice to satisfy the statutory requirement, such notice is insufficient to reach all who may enter the sanctuary, whether they are parishioners, tenants, vendors, guests, or simply a member of the public seeking sanctuary; this is untenable, as it could place a member of the public in violation of the law without notice.

ii. Prohibition on Gun Ban in Parking Areas

The 2005 re-enacted Act left in place the 2003 prohibition on banning firearms from parking lots. The Plaintiff's position is that the prohibition is another infringement on their ability to practice their religion, and is inconsistent with their rights as owners of private property. The State's position is that the prohibition exists to protect the right to travel. The State cites State v. Cuypers, 559 N.W.2d 435, 437 (Minn.App. 1997) for the right to intrastate travel. The Plaintiffs counter that Cuypers merely stands for the

proposition that a state may not make a law whose primary objective is to impede or deter travel. It is clear to this court that the 2005 Act's primary objective is not to impede travel in any way; those choosing to attend a religious service can choose to travel without their firearm or park their vehicle on the street or anywhere not on protected property.

In addition, the State proposes a "rule of thumb" for interpreting the law to address the Plaintiff's concerns: when a parking lot is used purely to park cars, the church may not impose a ban on firearms, but when the lot is used for a religious function, the church may impose a ban.

This court finds that in Minnesota, parking lots of a religious institution are integral to their religious mission. Even if the lots are used solely for parking, they are not public parking spaces: their use is for people who are at the sanctuary, either for religious services or to participate in a program as part of the church's mission. The integrity to the religious mission is clearer if the lots are not used entirely for parking but instead are used as part of a service. Thus, the State's "rule of thumb" is unworkable; for instance, it is entirely probable for a church to begin a ceremony or procession in its parking lot even if cars are parked there. Furthermore, the "rule of thumb" serves only to create confusion for the church, its guests, and law enforcement, undermining the stated purpose of uniformity in the laws of gun possession.

The parking lots are the private property of the institution and must be accorded the same protection under law as the religious dwelling or sanctuary. As the Minnesota Court of Appeals noted in its January 13, 2004 opinion in the first ECLC lawsuit, under the law, "Appellants are not permitted to control their parking areas or leased areas by prohibiting firearms or by otherwise enforcing such prohibitions under the law of trespass." 673 N.W.2d 517, 522 (Minn.App. 2004). The Appeals Court found that "[t]he right to exclude others is an essential part of general property rights." Id. Further, the Court held that the Act "threatens to impinge not on the economic viability of appellants' property, but on the use of appellants' property for their religious mission and worship practices." Id. Finally, the Court wrote that "by asking appellants to 'tolerate' an action that conflicts with their religious mission and beliefs, the state arguably is infringing on appellants' right to free exercise of religion..." Id. The Court of Appeals did not

distinguish between the property rights guaranteed vis-à-vis the actual sanctuary and the spaces used for other religious mission purposes (under lease or not) versus the parking lots for purposes of an Art.1, Sec. 16 violation.

iii. Prohibition on Gun Ban for Tenants/Employees

The logic that applies to parking lots of religious institutions applies equally to tenant spaces. The law's prohibition on excluding firearms by tenants (and their guests) constitutes an infringement on the rights of religious institutions to ban firearms from their private property. This court finds that, as the unrebutted testimony from the Plaintiffs' pastors show, whether or not the tenants of the religious dwelling or sanctuary property are tenants by lease or not, all of them are there as part of the mission of the organization. The loopholes in the Act allowing firearms possession by tenants are significantly burdensome. Again, the State concedes the sincerity of the Plaintiff's religious belief in the creation a place of peace and sanctuary, and the propriety of a gun ban in such a sanctuary. The tenancies in question can be located within the sanctuary, thereby infringing on the freedom of conscience of the religious organizations.

The same property rights concerns that apply to parking lots apply to the private indoor spaces of the religious organization which are used for the religious mission. However, it is important to note, as did the Court of Appeals, that it is not the economic viability of the property brought into question by the constitutional violation but the integrity of the premises used for religious purposes. Thus, the exact protection need not be accorded to commercial properties owned or operated by a religious institution but not integral to their religious mission. The Plaintiffs, in their supplemental finding, noted that the Article X, Section 1 of the Minnesota Constitution exempts churches and church property from taxation. Case law provides generally that tax exempt property is that which is "devoted to and reasonably necessary for the accomplishment of church purposes." Victory Lutheran Church v. Hennepin County, 373 N.W.2d 279, 280 (Minn. 1985). This would include the place of worship as well as property used for charitable, educational or other non-profit purposes, whether or not they are housed in the same building as the worship assembly, but *not* separate properties owned and operated by a religious institution and used for profit or other non-religious mission or related activities.

The loophole for tenants, and the State's proposed interpretation for tenants of religious organizations, creates confusion and destroys the purpose of unanimity. For instance, in the case of a child care center at ECLC, the church may ban firearms when the center acts as a licensed child care center, but may not do so when children are not present. Or, in the case if Unity, the church may ban alcohol, drugs, or other weapons from the sanctuary when it acts as a shelter for the homeless, but may not ban firearms. This loophole creates confusion for landlord, tenant and guest, and as stated below, undermines the State's interest in public safety.

C. Compelling State Interest

The Legislature laid out, in the title of the Re-enacted Act, in Minn. Stat. 624.714, subd. 22, the state interest in the Act: "The legislature of the state of Minnesota recognizes and declares that the second amendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test." This interest was also spoken to by the authors of the bill on the floor of the House and Senate. Both authors acknowledged that interpretations of what rights are guaranteed by the Second Amendment are still up for debate in our country, and that conflicting court opinions exist.[3] At the temporary injunction stage, the State also argued a compelling state interest in public safety. *See* ECLC's Memorandum in Support of Permanent Injunction, p. 18. Finally, the State has expressed an interest in uniformity of the laws concerning possession of a firearm. *See* State's Memorandum in Support of Motion for Summary Judgment. The State argues that these compelling interests give the court leeway not to reach the 2nd Amendment question, *see* id, n. 28, but it is only the 2nd Amendment that is preserved as compelling in the legislation.

In Hershberger, the state Supreme Court held that religious liberty is co-equal with civil liberty. 462 N.W.2d at 398. So, if indeed this Court did find the State interest in the individual right to bear arms to be sufficiently compelling, it nonetheless does not automatically override the right to religious liberty guaranteed under the Minnesota

[3] *See* Application of Atkinson, 291 N.W.2d 396, 398 (Minn. 1980) and Iverson v. City of St. Paul, 240 F. Supp. 1035 (D. Minn. 2003, *affirmed*, No. 03-1321 (8th Cir, 2003) (unpublished). *See also* United States v. Emerson, 270 F.3d 203 (5th Cir. 2001).

Constitution. Findings of a legislative body with regard to public purpose are to be accorded deference by the courts. Fugina v. Donovan, 104 N.W.2d 911, 915 (Minn. 1960). However, that deference is not absolute. Here, the legislative history submitted to the court shows that while the right to bear arms in self-defense was put forth by the authors and agreed to by the body, there is no testimony or evidence to show its necessity, particularly as it relates to religious institutions, let alone that it acts as a compelling state interest to overcome constitutional challenges. During legislative debate in 2005, both sides presented witnesses with regard to the law's effect (or potential effect) on public safety, but there is no evidence in the form of a study or report conducted by the State of Minnesota, for use by the Legislature, to prove that public safety is indeed increased by the 2005 Act, or that violent acts have been or would be deterred by the provisions allowing even the lawful possession of firearms on religious property.[4] And finally, the State's own interpretations of the law put forth to survive challenges to its constitutionality undermine its interests in uniformity.

Furthermore, the State has made no showing that the temporary injunctions in place with regard to religious institutions since 2003 have significantly burdened the right to bear arms *or* impeded public safety in any way. Consistent with the public safety caveat in Art. 1, Sec. 16 of the Minnesota Constitution, the Minnesota Supreme Court has held that only religious practices found to be inconsistent with public safety are denied an exemption from laws of general application. State v. French, 460 N.W.2d 2, 8 (Minn. 1990). There is no showing by the State that a sincere religious belief against the use of guns, and a resulting practice of a ban on firearms on religious property, is inconsistent with public safety. While a substantial public safety interest may be compelling to overcome a freedom of conscience claim, under Art. 1 §16 of the Minnesota Constitution, that public safety interest has not been proven here. Therefore, this court finds there is no compelling interest to prevent an exemption.

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[4] During the House Floor Session, May 18, 2005, Rep. Cornish notes that "[t]here's been a number of instances in the U.S. where somebody has walked into prayer meetings and done illegal acts with a firearm." *See* Lillehaug Aff., Ex. P., p. 11. However, there were no studies conducted by the Legislature or statistics noted with approval by the body, nor were any affidavits to that effect submitted as evidence in this proceeding.

D. The Least Restrictive Means

The State contends that the law as it stands is the least restrictive means to accomplish the goals of the 2005 Act; that the law as written is provides reasonable alternatives and restrictions which nonetheless allow the general public to exercise its right to self-defense and protect public safety. The Plaintiffs contend that an exemption for religious organizations is the least restrictive measure. Judge Lange, in writing her temporary Order, found for the Plaintiffs and temporarily created a religious exemption. This court agrees that a religious exemption is the least restrictive means to accomplish the goals of the Act without infringing on the constitutional rights of the Plaintiffs. As stated above, the signage or notice requirements, along with the prohibition on gun bans for parking lots and tenant spaces, unconstitutionally infringe on the freedom of conscience, and thus by definition are unreasonably restricting to a religious institution. The patchwork interpretations of the law suggested by the State to get around constitutional concerns merely create confusion and burdensome duties on the Plaintiffs, law enforcement, and the public. An exemption, by contrast, would place the religious institutions on the same footing as homeowners, currently exempted under the statute: they would be able to express a ban on guns on their *entire* religious property "in any lawful manner," dramatically simplifying the means in which the competing interests are accomplished.

Moreover, a religious exemption would place Minnesota in line with 13 other states that have some form of religious exemption to their "shall issue" laws. The State noted in its supplemental submissions to the court, currently 40 states have such "shall issue" laws. Of the 13 with religious exemptions, Arkansas, Georgia, Kansas, Louisiana, Michigan, Missouri, Mississippi, Nebraska, Ohio, and South Carolina have bans in place regarding churches or other places of worship; some of these have an exception to the ban if permission is granted. Three states, North Dakota, Virginia and Wyoming, have a ban in a place of worship during assembly for religious purpose unless permission is granted. In addition, Tennessee, Texas, and Utah have laws which allow that a religious institution *may* ban firearms upon notice, similar to the 2005 Act in Minnesota, though the form of the notice varies. The law in Michigan is the broadest because it contains a ban on any property owned or operated by a religious institution, not just a worship

facility, (though permission may be granted). The specifics of the other states' laws, though instructive, are in no way binding on this court's decision.

In summary, because the 2005 Act fails the "compelling state interest test" laid out in Hershberger and Hill-Murray, it impermissibly infringes on the Plaintiffs' freedom of conscience, and is an unconstitutional violation of Article I, Section 16 of the Minnesota Constitution.

IV. Freedom of Association Claim

The Plaintiffs' next allege that the 2005 Act violates their First Amendment right to free association. The United States Supreme Court has recognized the right to freedom of association as a derivative of certain First Amendment rights (and applied to the states under the Fourteenth Amendment). *See* NAACP v. Alabama, ex rel *Patterson*, 357 U.S. 449 (1958). As the Supreme Court stated, "it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtaining the freedom to associate is subject to the closest scrutiny." Id. at 461. And in Boy Scouts of America v. Dale, 530 U.S. 640, 647-48 (2000), the court included in that right the freedom not to associate. The plaintiffs allege that the 2005 Act, as written, forces an association with those who would carry guns, legally or illegally, on to their property, thereby violating their religious belief in nonviolence. The court in Dale established a three-part inquiry for a freedom of association claim: 1) does the organization engage in expressive association, 2) does the law in question affect the association's ability to advocate public or private viewpoints, 3) is there a compelling state interest to override the right to free association.

The State argues that the 2005 Act does not violate the Plaintiff's right to free association for several reasons: first, the State contends that there is no underlying First Amendment right from which to derive the right to associate; second, there is no right to associate because the church need not accept members who are gun-carriers and there is no right to associate with the public who are not members of the church, *i.e,* tenants, employees and guests; third, that the law does not prevent the church from advocating public or private positions; and fourth, the state's interest is compelling so as to override the right to free association.

With regard to the first inquiry, it is clear that because the Plaintiffs are religious organizations whose mission is to share a religious message, they engage in exactly the kind of expressive association meant to be protected by the right to free association. Their freedom of religion is guaranteed by the First Amendment, thus the derivative associational right possibly affected by the state action must be closely scrutinized.

The next inquiry, then, is whether the law affects the associations' ability to advocate public or private viewpoints. As the Supreme Court held in Dale, "associations do not have to 'associate' for the purpose of disseminating a certain message to be entitled to the protections of the First Amendment." Id. at 655. In addition, the First Amendment protects the association's method of expression. Id. Thus, the 2005 Act's compelled speech, through the signage requirements or the personal notice requirements, infringe on the message the religious institutions wish to communicate with the public. While there is certainly no prohibition on a religious association forming a private stand regarding gun violence, and even advocating it to the public, the association's inability to express a gun ban on their property as they see fit, or even to exclude those who would carry guns from their property, significantly undermines the organization's ability to communicate their message in the most effective way.

The third inquiry is whether or not the state's interest is compelling and will override the constitutional rights of the Plaintiffs. As stated above, the court found that the State has not demonstrated that its interest in the right to bear arms is compelling as against the constitutional violation of the freedom of conscience; and if it is not compelling for First Amendment purposes, it is not compelling for freedom of association purposes. Moreover, the State's interests in public safety and uniformity of laws are not furthered by the 2005 Act as it stands and do not withstand strict scrutiny.

Finally, the court must address the defense to the freedom of association claim put forth by the State: that there is no right to association with regard to a church and members of the public (that is, non-members of the church). The State contends that the relationship between the religious institutions and their tenants is commercial in nature and not protected by the First Amendment. The State makes essentially the same argument regarding employees: the association is contractual rather than expressive.

As stated above, it is clear from the evidence presented that the tenants of the leased spaces in question are tenants of the religious organizations as an integral part of the religious mission of the churches. And while the employees of the churches and their tenants are indisputably under contract in most instances, this does not reduce their association to one that is not protected by the First Amendment. A religious institution is "afforded the 'power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" Odenthal v. Minnesota Conference of Seventh-Day Adventists, 649 N.W.2d 426, 435 (Minn. 2002), *quoting* Presbyterian Church v. Hull Church, 393 U.S. 40 (1969). Thus a religious organization is, and must be free to not employ, lease to, or otherwise associate with, those who would interfere with a principle of their faith.

Lastly, the State challenges the right to freedom of association the Plaintiffs have with non-employees and non-tenants, presumably meaning members of the public. The State argues that the law does not force the plaintiff churches to accept as members those who would defy their gun bans. It is axiomatic that the church need not accept as members those who do not espouse their beliefs in nonviolence and opposition to guns. However, the right not to associate guaranteed by Dale does not extend only to those who would seek to become members of the church. Even outside those who have a contractual relationship with the church, the 2005 Act's prohibition on any firearm ban in parking lots, in tenant spaces, or premises used for religious mission, does indeed force the church to associate with those who would carry firearms on to their property. As noted under section III of this Order, the Court of Appeals has found that the right to exclude others is an essential property right. The Plaintiffs argue that the 2005 Act forces the religious institutions to associate with those who would carry guns on to their private property; this is not the same as saying there is a forced association by membership. Instead, the association is forced because there is no legal protection whatsoever to prevent the possession of firearms on certain private property of the religious institution. In addition, the law preempts common law criminal and civil trespass remedies in favor of the exclusive remedy of a petty misdemeanor and a total fine of $25 for a violation of an expressed gun ban in a building on the property. A petty misdemeanor is not even a crime under Minnesota law. The lack of any real remedy prevents a religious

organization from protecting their property, including the sanctuary, tenant spaces, and parking lots, all of which are integral to their religious mission, and stopping violations of their policies as well as infringements on their practices of nonviolence.

V. Religious Land Use and Institutionalized Persons Act (RLUIPA) Claim

The Religious Land Use and Institutionalized Persons Act of 2000, codified at 42 U.S.C. 2000cc, *et seq*, protects religious institutions from regulation that may unfairly place a burden. The Act is triggered by a determination of whether or not the regulation—in this case the 2005 Act---is a "land use regulation." In turn, a land use regulation is defined under RLUIPA as "a zoning or landmarking law, or application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land) if the claimant has an ownership...or other property interest in the regulated land..." 42 U.S.C. 2000cc-5(5). RLUIPA does not define a zoning law; the State argues a zoning law is merely one that guides the division of property and regulation of building design and use. But the State notes that Congress enacted RLUIPA to address zoning laws which prohibited the building *or operation* of religious institutions. State's Memorandum, p. 31. (emphasis added). The Plaintiffs contend that the act is a zoning law because it preempts municipal zoning laws concerning parking lots. The State argues that the 2005 Act does nothing to interfere with a church's use of parking lots and thus is not a zoning law. But it is only the State's interpretation of the law, which the court has already rejected, that does not interfere with the institutions' use of their parking lots. Thus the 2005 Act is a zoning law for purposes of triggering RLUIPA.

RLUIPA prohibits land use regulations which treat religious organizations less favorably than non-religious organizations. 42 U.S.C. 2000cc(b)(1). RLUIPA "requires land-use provisions that substantially burden religious exercise to be the least restrictive means of advancing a compelling government interest." The Lighthouse Institute of Evangelism, Inc., v. City of Long Branch, 406 F.Supp.2d 507, 515 (D. N.J. 2005). Next, "the Act has a nondiscrimination provision, which prohibits land-use regulations that disfavor religious uses to nonreligious uses." Id. This court has already ruled that the land-use provision at issue is a substantial burden not outweighed by the stated compelling interest, and is not the least restrictive means to accomplish the state's goals.

But the plaintiffs must meet the further burden: they must identify a nonreligious assembly that is treated more favorably that a religious assembly. Id. at 517. Here, one need only read the 2005 Act to see that it treats the private property of religious institutions less favorably than private residences; however, a residence would not be an assembly for purposes of the law. But the Plaintiffs do identify two secular places of assembly: the State Capitol complex and courthouse property. While the Capitol and the courthouses are not private property, they are properties of entities whose mission includes nondiscriminatory service to the general public. Yet the Capitol and courthouses are allowed to ban firearms, and that ban is guaranteed and protected by provisions in Minnesota's criminal code, at Minn. Stat. 609.66, subd. 1g. The preemption of any common law trespass protection by the 2005 Act and the absolute prohibition on a firearms ban in parking and tenant property, eliminates that protection, thus treating the religious institutions unfavorably, and the State points to no rational basis for the distinction.

Because the prohibition of a firearms ban on certain private property of religious institutions and the preemption of trespass protection makes the 2005 Act a zoning law, RLUIPA applies. And because the State has not made the case for a rational distinction between the nonreligious assembly places--such as the Capitol and courthouses--identified by the Plaintiffs, and the religious assembly places of the Plaintiffs' sanctuaries, the religious institutions are treated unfavorably by the 2005 Act, thus violating RLUIPA.

CONCLUSION

Plaintiffs Edina Community Lutheran Church and Unity Church of St. Paul have met the requirements under Minnesota law for a permanent injunction. A violation of their right to freedom of conscience under the Minnesota Constitution and a violation of their right to freedom of association under the federal Constitution is an irreparable harm for which there is no adequate legal remedy. "Where a trial court determines that the prevailing party is entitled to relief, it may fashion such remedies, legal and equitable, as are necessary to effectuate such relief." Cherne Industrial, 278 N.W.2d at 91. "A permanent injunction is the 'proper remedy to restrain a continuous and repeatedly threatened trespass.'" Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, *quoting*

Theros v. Phillips, 256 N.W.2d 852, 859 (Minn. 1977). Here, the Court finds that the most appropriate way to prevent a continuing violation of the plaintiffs' rights is to enjoin the 2005 Act's enforcement with regard to religious institutions. A permanent injunction, which will in effect act as an exemption for religious organizations, will serve to prevent any further irreparable injury to the institutions. A permanent injunction will also eliminate confusing legal loopholes while still upholding and preserving the constitutionality of the remaining purposes and provisions of the Minnesota Citizens' Personal Protection Act. Consistent with the temporary injunction issued on September 9, 2005, Plaintiffs may prohibit firearms on all of their properties used for religious purposes, and may do so in any lawful manner.

WRH/ejt